

Nevada

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I. Introduction

Trusts have long been the indispensable tool of estate planning and asset management for wealthy families. A properly drafted trust in a jurisdiction with innovative and advantageous trust laws can minimize tax exposure on assets while insulating assets from creditors for multiple generations. However, state laws may limit the flexibility of a trust by imposing fiduciary duties on trustees, restricting the administration of a trust and its assets, and expanding fiduciary liabilities.

For wealthy families, a corporate structure is attractive for long-term asset management and to preserve wealth through multiple generations, a trust remaining the ideal strategy. A private trust company provides fiduciary and related services to one family. The private trust company is often owned by that family, either directly or through a purpose trust. A private trust company may provide significant advantages over traditional fiduciaries, especially when serving as trustee of an irrevocable discretionary spendthrift trust.

2. What is a Nevada family trust company?

'Private family trust company' and 'family trust company' are often used interchangeably. Nevada statutes use the latter, so in order to remain consistent with Nevada law, the term 'family trust company' will be used in this chapter.

Nevada Revised Statutes (NRS) Section 669.042 defines a family trust company as a corporation or limited liability company that acts or intends to act as a fiduciary and is qualified to serve 'family members' as defined by applicable laws in the state of Nevada. A Nevada family trust company may not solicit business from persons that are not considered family members under Nevada family trust laws.¹

Typically, a Nevada family trust company is owned by a family member through long-term trusts or a purpose trust.

3. Why establish a family trust company?

Both natural persons and entities may serve as a trust's trustee. Often, natural persons will have legitimate concerns in terms of personal liability with the role of trustee, whereas corporate or other institutional trustees generally prefer to manage diversified portfolios and to avoid exposure to potential liability associated with an active business or other closely-held entity.

Many wealthy families use family businesses and heavily concentrated assets to fund their trusts, often with assets and securities that may or may not be marketable. Trusts with controlling interests in family businesses place a hefty responsibility on the trustee, with potential liability for business decisions. Furthermore, the securities and assets in the trust may span several generations, rendering a natural person as trustee inadequate from a succession and continuity viewpoint.

A family trust company provides fiduciary and related services to a single-family. The family trust company is often directly owned by the family, but in some jurisdictions, other ownership structures are possible (such as ownership by a trust). In the right circumstances, a family trust company may provide significant advantages over traditional fiduciaries.

4. Advantages of a Nevada family trust company

4.1 Improved continuity

Individual trustees may die unexpectedly, become incapacitated, or retire. Commercial banks and trust companies may change ownership, management, location, or staffing. While these changes can be planned for, they are inevitably disruptive.

A well organized and operated family trust company structure can minimize these disruptions and give the family greater control over any transitions, with clear business succession and maintenance of family values and goals. A family trust company typically will hire internally or outsource professionals to manage the trusts and provide for family involvement through a family trust company's committee structures, ensuring institutional quality oversight and management of family assets.

4.2 Ability to deal with special assets

Traditional fiduciaries may be reluctant or even unable to hold or manage special assets such as an operating family business or a large concentration of low basis legacy securities. A family trust company may have greater flexibility and more knowledge of the business. A family trust company may provide very tailored oversight of unusual assets or concentrated

positions, optimizing the balance between the need to diversify and the grantor's or beneficiary's choice to retain assets.

Trusts administered by a family trust company can hold other assets, such as real estate, private equity, and alternative assets in concentration (eg, hedge funds). While these types of assets may be appropriate for the family, they may not be acceptable to a commercial or individual fiduciary. It is important to administer trusts under state laws that allow limitations on the trustee's duty to diversify.

4.3 Limited director and officer liability

The officers and directors of a family trust company typically have less exposure to personal liability than an individual serving as trustee since the family trust company is a limited liability entity. The business judgment rule and directors' and officers' liability coverage protect directors and officers. This limitation of liability may allow the family trust company to attract the most highly qualified individuals from both within and outside the family. Such individuals may serve as officers, directors, and committee members of the family trust company even though they would be reluctant or unwilling to serve as trustee.

4.4 Greater voice for the family

A family trust company can be structured to allow the family (or even individual trust grantors or beneficiaries) the greatest possible role in investment and management decisions, while still preserving the tax benefits of having discretionary distribution decisions made by independent persons, and maintaining control and concentrated investment positions in legacy companies. Governing instruments can incorporate the long-term wishes and intent of the trust's grantors.

4.5 Possible long-term cost and tax savings

While the cost of establishing and maintaining a family trust company is significant, it may compare favorably over time to the fees and expenses of traditional fiduciaries. Also, while traditional fiduciaries often consider the tax implications of trust-related decisions, a family trust company may be even more flexible and effective in doing so, and be in low- or zero-state-tax jurisdictions, making accumulating non-grantor long-term trusts more desirable.

Since family trust companies have limited profit motives and no proprietary products and associated conflicts of interest, the family trust company can reduce the cost of trust administration while ensuring that risk management is targeted to the needs of the family.

4.6 Improved wealth transfer and income tax planning and execution

The family trust company can facilitate comprehensive and consistent wealth transfer and income tax planning and execution by using approved customized trust instruments such as grantor retained annuity trusts (GRATs), qualified personal residence trusts (QPRTs), multigenerational dynasty trusts, and insurance trusts without unnecessary, duplicative expenditures of time and resources tied to the objectives of the family and the preservation of key or iconic assets. The family trust company may also serve as trust protector, investment trust adviser, and distribution trust adviser in trust arrangements administered by third-party trustees.

4.7 Choice of jurisdiction

Subject to some limitations, the family has the opportunity to choose the location and governing law of the family trust company and can select the jurisdiction with the most favorable characteristics for that family, taking into consideration taxes, the legal system, and convenience. The location can be important where an individual who would otherwise be a preferred candidate to serve as an individual trustee resides in a high-tax state like California. Often, such a person can serve as a director, officer, or committee member of a family trust company without adverse tax consequences.

4.8 Broader access to investments and advisers/improved compounding

A family trust company has no financial products of its own to sell and may select the best outside investment advisers in each asset class, hire its own in-house advisers, or both. The family trust company structure can facilitate the creation of investment vehicles such as common trust funds and series limited liability companies, to allow trusts of all sizes to access asset classes with significant minimums and limited access. A family trust company may be more willing to consider certain non-traditional investments such as alternative assets and private equity which may yield a greater compounding of wealth, especially in a low-market-return environment.

4.9 Greater opportunities for pooled investment funds, financing, and group purchasing

A licensed family trust company may form investment partnerships for trusts under its administration using economies of scale, centralized procurement, due diligence, record-keeping, and administration. Family trust companies frequently arrange advantageous financing and credit facilities on competitive terms and access or procure assets or insurance (eg, life insurance) jointly at competitive rates and terms.

4.10 Improved security and risk management

Family trust companies can offer improved privacy, security and secured document retention, and stricter confidentiality of client information.

4.11 Integration with family office and foundations

A family trust company may integrate or complement family offices, charitable trusts, and charitable foundations. While traditional fiduciaries can often work closely and effectively with family offices and charitable foundations, a family trust company may offer one-stop shopping for these functions, simplifying the lives of the family members involved.

4.12 More personalized service

If the family trust company hires its own staff or utilizes family office personnel, the family does not have to compete with other clients for the attention of the fiduciary. Even if the family trust company contracts with a commercial trust company or another service provider for certain back-office functions, the family trust company may still be more responsive than traditional fiduciaries.

4.13 Litigation deterrence

The family trust company itself typically has limited assets, so it may be an unattractive defendant as compared to a deep-pocket commercial bank or wealthy individual trustee. Directors of a family trust company may benefit from the application of the business judgment rule, which insulates disinterested and independent directors from personal liability if they acted with due care, made reasonable inquiry and did not act in bad faith, or were involved in a self-dealing situation. The capitalization of the family trust company and appropriate reviews of available insurance and indemnity provisions are essential.

4.14 Opportunities for family training

A family trust company may permit younger generations to learn about asset management and, if applicable, the operation of a family business through direct involvement in the family trust company, with assistance from more experienced family members and advisers.

4.15 Flexibility and adaptability

Perhaps most importantly, a family trust company, combined with well-drafted trust documents, provides tremendous flexibility to adapt to changing circumstances and needs through multiple generations, especially through the use of trust decanting.

4.16 Outsourcing

Many of the critical functions of the family trust company can be outsourced to family offices, trust service providers, and other third-party vendors to reduce organizational and operating costs, including human resource costs.

4.17 NRS Chapter 669A

NRS Chapter 669A creates some unique options and liability limitations not available to individual trustees or public trust companies (ie, trust companies that provide services to the general public) acting as fiduciaries, particularly relating to:

- the duty to diversify;
- permitted related party transactions;
- sealing of records;
- attorney–client privilege; and
- beneficiary representatives.

5. Disadvantages of a Nevada family trust company

5.1 Material organizational and operating costs

Family trust companies are like any other business, but require careful attention to capitalization requirements and formation, operational and regulatory details. State regulators regulate and examine licensed family trust companies. These state regulators enforce statutory and regulatory requirements including frequent examination of the family trust company's operations.

To reduce liability exposure of the family trust company through risk management, the family trust company should operate in a similar way to retail trust companies, which may require practice and procedure manuals, operational and data security, extensive documentation, committee meetings, compliance programs, internal audits, and legal review. Some family trust companies incur the cost of annual financial and fiduciary audits of the family trust company and its accounts. Licensing, formation, implementation, and operating costs are material and recurrent.

Families who do not contemplate assets under the family trust company's management over \$100 million should carefully explore other alternatives and weigh ongoing costs and benefits.

5.2 Uncertain tax environment

Although the Internal Revenue Service (IRS) has issued Notice 2008-63 ('the Notice') setting forth a proposed revenue ruling on many tax issues surrounding the use of family trust companies, it has not published a definitive ruling or guidance and will not issue private letter rulings. The IRS removed the private trust company revenue ruling from its priority list for 2016. Many family trust companies have been formed based on the Notice.

With no public interests involved in a Nevada family trust company, Nevada family trust companies allow for less federal oversight for wealthy families. A family trust company may utilize a qualified firm to execute an independent review rather than a Financial Institutions Department (FID) examination. Also, federal examinations for family trust companies are less frequent compared to those for a public trust company.

As is further discussed below, if a licensed family trust company meets certain requirements it can be exempt from the Investment Advisers Act. Family offices may also be exempt under the family office exception, which presents three requirements that a family office must meet to qualify for exclusion from regulation within the Act:

- it must provide investment advice only to 'family clients';
- it must be solely owned by family clients and exclusively controlled by 'family members' or 'family entities'; and
- it must not hold itself out to the public as an investment adviser.

As an alternative, families may consider forming a licensed family trust company under the state banking regulation exception, although the family trust company will be subject to state law requirements and regulations.

6. Statutory framework

While only a handful of states allow for private trust companies, each state uses different statutory language to define family members, whom a private trust company may serve, and who may own a private trust company.

Nevada family trust companies are governed by NRS Chapters 669A and 669, which provide the statutory framework for their governance and oversight, as well as defining 'family member' and other terms as below.

- 'Designated relative' – a common ancestor of the family who may be living or deceased and is designated by the family trust company.²
- 'Common ancestor' – an ancestor of the family who may be living or deceased and is not registered as the designated relative. However, a designated relative is a common ancestor.

- ‘Family member’ – the designated relative and any persons within ten degrees of lineal kinship to the designated relative and any persons within nine degrees of collateral kinship.³
- ‘Family affiliate’ – a company (eg, a Nevada family trust company) or other entity in which “one or more family members or affiliates own” a material interest, either directly or indirectly; or, a company or entity that carries the power to “cause the direction of the management and policies of that company or entity”.⁴
- ‘Lineal kinship’ – the relationship of a family member “who is in direct line of ascent or descent from the designated relative”.⁵
- ‘Collateral kinship’ – a relationship stemming from a common ancestor (not necessarily the designated relative) who is not lineal.⁶

NRS 669A.070 allows a Nevada family trust company to serve the following clients:

- a family member with lineal kinship to the designated relative within 10 degrees;⁷
- a family member with collateral kinship to the designated relative within 9 degrees;
- adopted children;
- step-children;
- spouses and former spouses, including spouses and former spouses within 5 degrees of lineal kinship;
- any non-family member who is an individual beneficiary under a will or trust created by a family member;
- family affiliates and the affiliates’ directors, officers and immediate family members;
- family member trusts;
- a trust not owned by a family member if at least one family member is a beneficiary; and
- a charitable foundation, as long as a family member is “an organiser, incorporator, officer, member of the governing board, trustee, major donor or noncharitable beneficiary”; and “the officers, directors, individual trustees and managers of that foundation, trust or entity and their immediate families”.

7. Establishing a Nevada family trust company

Nevada trust laws allow for both licensed and unlicensed family trust companies, and each has different requirements detailed in Nevada statutes. However, there are shared requirements for both.

7.1 Limited liability company or corporation

Nevada requires a family trust company to be either a limited liability company (LLC) or a corporation. Upon creating an LLC or corporation, a business license is acquired and payment for business tax owed (\$200 in Nevada). An unlicensed Nevada family trust company may not advertise or use the word 'trust' as part of the family trust company's name. Moreover, the family trust company's name should not resemble another trust company's name; and the family trust company must clearly state that the purpose of forming an LLC or corporation is to establish a Nevada family trust company.⁸

7.2 Local business license and registration

Although registering with the Nevada Division of Financial Institutions (NDFI) is not required, both licensed and unlicensed Nevada family trust companies must obtain a license from the county or city where the business is located. If a family trust company is licensed, a copy of the local license must be submitted to the NDFI. Applicable registration must also be obtained.⁹

7.3 Tax compliance

Both licensed and unlicensed family trust companies must comply with all applicable federal and state tax laws.

7.4 Licensed v unlicensed

Nevada is one of the few states where family trust company licensing is optional. Nevada law states that "a family trust company is not required to be licensed as a trust company".¹⁰ Thus, an unlicensed family trust company may operate (assuming there is no application for licensure) and is not subject to supervision by the NDFI Commissioner ('the Commissioner'). However, an unlicensed family trust company is required to submit the name of the designated relative to the Commissioner.¹¹

An unlicensed family trust company circumvents many of the requirements of licensing, avoids the application expense and waiting period, forgoes the minimum capital requirements, and is not required to undergo supervisory examinations in the future. Moreover, an unlicensed family trust company may delegate third-party investment management.

Whether a family trust company is licensed or unlicensed depends on the family's objectives. A family may establish an unlicensed family trust company quickly and cost-effective. However, there are many advantages to establishing a licensed Nevada family trust company (see section 9.2 below).

8. Structure of a Nevada family trust company

A Nevada family trust company typically contains four main elements (though depending on a family's objectives the structure may be much more complex):

- board of directors;
- trust administrators;
- committees; and
- shareholders.

8.1 Board of directors or board of managers

A board of directors or board of managers typically manages a Nevada family trust company and is elected by family members and shareholders. In the alternative, a trust committee could be set up for this purpose. Nevada statute permits both family and non-family members to serve on the board.¹²

Typical board responsibilities include:

- managing the family trust company's operations;
- regulatory compliance;
- oversight of committees;
- annual review of family trust company policies and procedures;
- designating family members; and
- assigning responsibilities.

8.2 Committees

(a) *Investment committee*

An investment committee is responsible for selecting investment advisers and monitoring their performance. Family members can be a part of the investment committee. Investment committees are also responsible for the following:

- indemnification of committee members;
- initial review of trust assets;
- annual review of trust assets; and
- establishment of an investment policy statement for every trust account.

(b) *Amendment committee*

The amendment committee is a concept taken from the Notice, to make changes to governing documents. The amendment committee has several defining characteristics:

- It has exclusive authority over:
 - creation, operation, and membership of the distribution and amendment committees;
 - oversight of provisions regarding the delegation of personnel decisions to managers and officers; and
 - the prohibition of reciprocal agreements between family members.
- Two in three members must be non-family and non-employee; and not related or subordinate (within the meaning of Section 672(c) of the Internal Revenue Code of 1986) to any family member.
- It is expected to take a conservative approach.
- All members must be independent persons.

(c) Distribution committee

The distribution committee reviews beneficiary distribution requests against the following criteria:

- authority for the distribution in governing trust documents;
- reason for the distribution;
- amount requested;
- source of funds;
- impact on other beneficiaries; and
- supporting documentation.

The committee has responsibility for overall prudent management of fiduciary distributions as follows:

- use of trust assets by beneficiaries; and
- discretionary distributions.

9. Licensing

9.1 Minimum requirements

Like Wyoming and Florida, Nevada is a three-tier trust company jurisdiction, having:

- regulated institutional trust companies (eg, Alliance Trust Company of Nevada);
- regulated private family trust companies; and
- unregulated private family trust companies.

Nevada statutes support both regulated (licensed) and unregulated (unlicensed) trust companies and outline minimum requirements for both.

(a) Minimum requirements for unlicensed family trust companies

An unlicensed Nevada family trust company has fewer mandated requirements than a licensed family trust company. However, to clearly establish physical nexus with Nevada, an unlicensed family trust company may consider meeting the same requirements as its licensed counterpart.

(b) Minimum requirements for licensed family trust companies

NRS 669A.140 mandates that a Nevada family trust company licensed by the Nevada NDFI must:

- have at least one family trust company officer resident in Nevada;
- disclose a designated relative with the Commissioner;
- have a physical office in Nevada such that “original or true copies of all material business records and accounts of the licensed family trust company may be accessed and readily available for examination by the Division of Financial Institutions”;
- have a registered agent with an office and a street address in Nevada;
- possess all applicable licenses, registrations, and permits, both state and local; and
- maintain a bank account with a bank that has a principal office or a branch in Nevada.¹³

NRS 669A.160 mandates that a Nevada family trust company licensed by the Nevada NDFI must:

- have stockholders’ equity of \$300,000 or greater;¹⁴ and
- pay an application fee of \$3,000.

NRS 669A.190 mandates that a Nevada family trust company licensed by the Nevada NDFI must pay a non-refundable fee not more than \$3,000.¹⁵

Typically, applications are approved in four to six months, assuming all the requirements are met.

9.2 Advantages of licensing

(a) No registration with the SEC

A licensed Nevada family trust company regulated by a state banking regulator is not an investment adviser under the Investment Advisers Act of 1940. As a consequence, a licensed family trust company avoids registration with the SEC as an investment adviser – and the limitations associated with the family office rule, especially the limit on types of fiduciary relationships.¹⁶

(b) Common trust fund exemption

A licensed Nevada family trust company can provide an avenue for the trusts under its administration to gain access to alternative investments they would not normally have. Licensed family trust companies that qualify to act as fiduciary are permitted by states to establish common trust funds.

As a collective investment fund, a common trust fund can invest in an array of assets, including private equity funds and hedge funds, and units in a common trust fund can be purchased for trusts managed by the licensed private trust company. Family trusts, regardless of their size, can gain access to alternative investments by investing in a common trust fund. Common trust funds are an exception to the definition of ‘investment company’ under the Investment Company Act of 1940, and they operate outside the regulatory purview of the SEC.¹⁷

(c) Fewer operational limitations

A licensed family trust company avoids many of the operational, ownership, and service limitations applicable to unlicensed family trust companies who qualify for the SEC’s family office exception and allows for a wider array of trust beneficiaries and participation by key employees of the licensed family trust company.

(d) Optimised risk management

A licensed family trust company is subject to regulatory overview and periodic examination by state or independent examiners, engendering more formalized risk management and greater accountability, including with family office interactions. Moreover, the key owners, officers, and directors are subject to background checks and fingerprinting.

(e) Greater protection

A licensed family trust company is less susceptible to veil-piercing arguments due to its required minimum capital, formality requirements, and regulatory supervision. Family members may prefer more regulatory oversight.

(f) Multiple jurisdictions

As long as an office is located and licensed in Nevada, a licensed family trust company can open branch offices in other family trust company jurisdictions such as Florida, Texas, Tennessee, and New Hampshire. If the office is licensed in Nevada, Nevada allows the family trust company to select a situs outside of Nevada to administer trusts.

(g) Favourably viewed

Potential independent board and committee member candidates and key executives view a licensed Nevada family trust company more favorably than unlicensed family trust companies.

(h) Connection to Nevada

A licensed family trust company should meet all state and local requirements such as mandatory capital amounts required bank accounts, periodic board and committee meetings, applicable state and local licenses, required state resident officer and state supervision, providing more substance to a Nevada nexus regarding competing state tax, trust situs and trust administration issues.

(i) Legal legitimacy

A licensed family trust company may be viewed as more legitimate than an unlicensed trust company before courts and institutions. Vendors, investment advisers, and insurance companies may have a higher comfort level dealing with a licensed family trust company and treat it as more of an institution.

(j) Nominal flexibility

A licensed family trust company can use the term 'trust' in its official name when formed in Nevada.

(k) Privacy and protection of Nevada situs

A licensed family trust company is afforded privacy, confidentiality, and protection under Nevada statutes.

10. Estate planning advantages of Nevada situs

Nevada is widely known for having asset protection and tax benefits as well as dynasty trust provisions. Many wealthy families establish trusts in Nevada to protect their assets and their privacy now and for future generations.

These are the key benefits of Nevada situs:

- Nevada allows self-settled spendthrift trusts by statute, also known as domestic asset protection trusts or Nevada asset protection trusts. Nevada protects wealth more than any other state. It is one of two states that has no exception creditors, including divorcing spouses. The Supreme Court set a precedent in the recent case of *Klabacka v Nelson*, protecting the assets in Eric Nelson's Nevada asset protection trust from his divorced spouse, Lynita Nelson.¹⁸

- Where a Nevada trustee is used, the grantor does not need to live in Nevada to use a Nevada asset protection trust. Satisfying the Nevada family trust company requirements will also meet the trustee requirements for utilizing Nevada asset protection strategies.
- Nevada has no state or corporate income tax. Therefore, income generated from the trust is never taxed at the state level.
- With income accumulated in and capital gains realized by an irrevocable trust, Nevada does not impose any state income tax. Thus, income within a Nevada trust may not be subject to state income tax. Nevada does not tax the trust income that a trustee actually distributes to beneficiaries. The recent United States Supreme Court decision in *North Carolina Department of Revenue v Kimberly Rice Kaestner 1992 Family Trust* reaffirmed the constitutional limits on US state laws governing the taxation of trusts and thus reinforces the potential state tax advantage of having a Nevada trustee administer a discretionary trust for the benefit of beneficiaries residing in high-state-tax jurisdictions.¹⁹
- The value of intangible personal properties within a Nevada trust such as bonds, public and private securities, mutual fund shares, patents, copyrights, royalties, life insurance, and annuity contracts and partnership interests are not subject to taxation.
- While many states limit the duration of a trust, Nevada allows longer-term trusts to remain in effect for up to 365 years. Assets held in a dynasty trust, a type of 'generation-skipping' trust, can benefit generations of descendants without incurring estate, gift, or generation-skipping transfer taxes.
- Nevada law permits individuals to create self-settled trusts that protect assets, especially intangible financial assets, from claims of unforeseen creditors. This provides an alternative for clients that do not wish to incur the complexity, expense, and tax compliance and reporting obligations of an offshore trust to safeguard their assets.
- To benefit from evolving trust laws or to manage existing trust documents that may be problematic, Nevada law permits the relocation of property or assets from one trust to a second trust, also known as trust decanting. Additionally, a trustee may modify the provisions of a trust without obtaining court approval. Modifying trust provisions or decanting a trust may be done through the use of a notice of proposed action and non-judicial settlement agreement to avoid costly court proceedings.
- Nevada is also a leader in developing laws and regulations for financial technology, embracing the use of blockchain-for-business, e-signature, and eNotaries.
- Nevada has rejected the adoption of the fiduciary exception to the attorney-client privilege based on a recent Nevada Supreme Court decision.

11. Nevada asset protection trusts

More and more domestic and international families are establishing Nevada asset protection trusts. Nevada asset protection trusts include a spendthrift provision that may prevent beneficiaries and potential creditors (including previous spouses) from gaining direct access to assets within the trust.

12. Nevada self-settled spendthrift trust

In 1999, the state of Nevada passed several laws that provide for the use of self-settled spendthrift trusts. These laws were strengthened in 2009 to provide additional guidance to settlors and advisers.

Nevada self-settled spendthrift trusts (also referred to as Nevada domestic asset protection trusts), allow a grantor to place assets into an irrevocable trust and remain a beneficiary of that trust. The state statutes require the use of an independent trustee for any distributions to the grantor. The statute requires the trustee or at least one independent co-trustee to be a Nevada Resident or a Nevada financial institution with trust powers.

Under Nevada law, the assets are secure from the claims of creditors after a 'seasoning period' of two years from the date of transfer or, for an existing creditor, six months from the date the creditor discovers or reasonably should have discovered the transfer, whichever is the later.

13. Nevada dynasty trusts

A Nevada dynasty trust holds assets in trust for multiple generations. The primary advantages include the minimization or elimination of distribution taxes, estate taxes, inheritance taxes, transfer taxes, and other potential future taxes. These trusts may also provide asset protection for third-party beneficiaries through the use of a spendthrift clause.

The benefits of a Nevada dynasty trust are as follows:

- Nevada dynasty trusts protect assets for beneficiaries for up to 365 years.
- Both domestic and international families can establish a Nevada dynasty trust.
- Nevada dynasty trusts can provide estate and other tax benefits for multiple generations.

13.1 Tax advantages of a Nevada dynasty trust

Although assets are subject to US gift and estate taxes or the lifetime exemption when they are transferred to a trust, a Nevada dynasty trust with a proper allocation of US generation-

skipping transfer tax exemption ensures that they will not be taxed again at the estate level, even though many future generations will benefit from gifted assets.

13.2 Balance of flexibility and control

The grantor of the Nevada dynasty trust can exercise a high degree of control over assets, beneficiaries, and rights. Descendants and beneficiaries, however, cannot easily alter the terms of the trust. Dynasty trusts are irrevocable. Once created, they cannot be altered when family and financial situations change. A grantor may make the terms of the gift general or extremely detailed, as preferred. A grantor can also grant beneficiaries the ability to allocate future trust assets or provide for trustee discretion around beneficiary needs.

14. Nevada incomplete non-grantor trusts

By transferring intangible assets into a Nevada Incomplete Non-Grantor Trust (NING) as incomplete gifts, the transferred assets become a separate taxpayer giving a grantor the tax benefits of Nevada.

14.1 Incomplete gift

Grantors utilize a NING to create an irrevocable trust without sacrificing a basis adjustment for the trust's assets at death or having to pay gift tax. Assets in a NING are included in the grantor's gross estate where the basis is adjusted to the date of death and transfers are not completed gifts, nor do they require a federal gift tax exclusion.

14.2 Separate taxpayer

If a grantor lives in a high-income tax state, they can form a NING to transfer some of that tax burden to Nevada, where there is no state income tax. NINGs are not subject to taxes in the grantor's home state, and the grantor's domicile does not determine the trust residence.

[1](#)NRS § 669.042.

[2](#)NRS § 669.042(a).

[3](#)NRS § 669.042(b).

[4](#)NRS § 669A.060.

[5](#)NRS § 669.042(3)(e)(2).

[6](#)NRS § 669.042(3)(e)(1).

7Degrees of kinship are based on the number of steps a family member is from a designated relative (lineal kinship) or common ancestor (collateral kinship).

8NRS 669A.180.

9NRS 669A.140.

10NRS 669A.100.

11NRS 669.042.

12NRS 669A.070.

13NRS 669A.140. 14 NRS 669A.160.

15NRS 669A.190. Available at: www.leg.state.nv.us/NRS/NRS-669A.html#NRS669ASec140.

16See: www.sec.gov/divisions/investment/iaregulation/memoia.htm.

17*ibid.*

18133 Nev Adv Op 24 (25 May 2017).

19Case no 18-457, 588 US ___ (2019).